

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
THIRD DIVISION**

In re:

BKY 04-33308 GFK

*Charles M. Schrandt and
Beverly A. Schrandt,*

Debtors.

NOTICE OF OBJECTION TO
CONFIRMATION OF PLAN AND
MOTION TO DISMISS

TO: All parties entitled to notice pursuant to LOCAL RULE 9013-3.

1. Jasmine Z. Keller, Standing Chapter 13 Trustee (the "Trustee"), by and through the undersigned counsel, moves the court for the relief requested below and gives notice of hearing herewith.

2. A hearing on this motion will be held before the Honorable Gregory F. Kishel, Courtroom 228B, U.S. Courthouse, 316 North Robert Street, St. Paul, Minnesota, at 10:30 a.m. on **July 29, 2004**, or as soon thereafter as counsel may be heard.

3. Any response to this motion must be filed and delivered not later than 10:30 a.m. on July 28, 2004, which is 24 hours before the time set for hearing, or filed and served by mail not later than July 26, 2004, which is three business days before the hearing date. **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. This court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334, FED. R. BANKR. P. 5005, and LOCAL RULE 1070-1. The proceeding is a core proceeding. The Chapter 13 petition was filed on June 3, 2004. The case is now pending in this court.

5. This motion arises under 11 U.S.C. §§ 1322 & 1325 and FED. R. BANKR. P. 3015 and LOCAL RULES 3015-1. Movant requests relief with respect to denial of confirmation of the Plan and for dismissal of the case.

6. The Debtors filed a Chapter 13 Plan on June 3, 2004 (the "Plan"). The Plan provides for payments of \$781.91 per month for 36 months for a total contribution of \$28,149.84. The Plan would allow for distribution on account of estimated nonpriority unsecured claims approximately \$1,221.74 for 3% of the claim amounts estimated at the time of filing at \$45,687.06.

7. To date, the Debtors have paid the Trustee \$972 and are current in contributions to the Plan through July 2004.

8. The Debtors propose to pay directly a number of monthly expenses that the Trustee believes are excessive or unnecessary: \$400 for maintenance, although the Debtors reside in rental property; \$1,000 per month for food for the Debtors, with bi-weekly visits by their grandchild; \$1,200 for rent for their adult son; and, \$155 per month for repayment of their adult son's student loan or loans.

9. The Trustee objects to confirmation of the Plan on the grounds that the Plan does not devote all of the Debtors' projected disposable income to payments under the plan. 11 U.S.C. § 1325(b)(1). A debtor under chapter 13 should contribute all disposable income to the debtor's plan. *In re McDaniel*, 126 B.R. 782, 784 (Bankr. D. Minn. 1991). "Disposable income" includes all of a debtor's income which is "not reasonably necessary to be expended" by the debtor. 11 U.S.C. § 1325(b)(2). "Reasonably necessary to be expended" does not necessarily mean that such expenses should be sufficient to maintain the debtor's former lifestyle. *McDaniel*, 126 B.R. at 784.

10. The Debtors' additional disposable income includes funds directed to payment of an expense for rental property that is ordinarily the owner's responsibility, a large food expense for two individuals, and payment of debts on behalf of another adult. Such a refusal to focus on the best interest of creditors shows that the Debtors are more intent on maintaining their pre-petition lifestyle and spending habits than providing their creditors with a fair distribution over the term of their Plan.

11. In some cases, failure of a debtor to contribute all disposable income to a chapter 13 plan, thereby failing a "best efforts" test, demonstrates a lack of good faith as required by § 1325(a)(3) of the Bankruptcy Code and may be cause for dismissal. *In re Cordes*, 147 B.R. 498 (Bankr. D. Minn. 1992).

12. If necessary, the Trustee reserves the right to call the Debtors and a member of her staff to testify as to the matters alleged in this motion.

WHEREFORE, the Trustee requests entry of an order as follows:

- a. Denying confirmation of the Debtors' Plan;
- b. Dismissing the Chapter 13 case; and,
- c. Granting such other and further relief the Court deems equitable and just.

Dated: July 20, 2004

Jasmine Z. Keller, Trustee

/s/ Margaret H. Culp
Thomas E. Johnson, #52000
Margaret H. Culp, #180609
Counsel to the Chapter 13 Trustee
12 South Sixth Street, Suite 310
Minneapolis, MN 55402
612-338-7591

VERIFICATION

I, Margaret H. Culp, an employee of Jasmine Z. Keller, the Standing Chapter 13 Trustee, declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Dated: July 20, 2004

/e/ Margaret H. Culp

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

In re:

*Charles M. Schrandt and
Beverly A. Schrandt,*

Debtors.

BKY 04-33308 GFK

Chapter 13

**MEMORANDUM IN SUPPORT OF OBJECTION TO CONFIRMATION AND FOR
DISMISSAL OF CHAPTER 13 CASE**

FACTS

The facts supporting the Trustee's objection are summarized in the accompanying motion and will not be repeated here. The Trustee also relies on the representations made by the Debtors in their Schedules.

LEGAL DISCUSSION

Pursuant to 11 U.S.C. § 1325(b)(1), a Debtor must contribute all of his disposable income to payments under a proposed plan of reorganization. Such contribution should be determined with respect to the need to treat creditors equitably, and not necessarily based upon a debtor's pre-filing lifestyle. *In re McDaniel*, 126 B.R. 782, 784 (Bankr. D. Minn. 1991). Where, as here, it is evident from the schedules that the monthly expenses of the Debtors appear to have been based upon a desire to retain their pre-petition lifestyle and spending habits rather than expenses shown to be objectively reasonable as required by 11 U.S.C. § 1325(2)(A), the Plan fails to comply with the Statute and should not be confirmed. The Debtors' need for reasonable housing, food and son's debt service are not supported by the amount budgeted for these expenses. As such, the housing, food and son's debt service expenses are suspect. *In re Cordes*, 147 B.R. 498 (Bankr. D. Minn. 1992).

Making a conscious decision to divert a large amount of income to excessive housing, food, and debt service on behalf of another adult, based upon the requirements of 11 U.S.C. § 1325(a)(3), might be viewed as bad faith.

For the reasons stated herein, the Trustee respectfully requests that confirmation of the Debtors' proposed Plan be denied, that the case be dismissed, and for such other relief as the Court determines just and equitable.

Respectfully submitted:

Dated: July 20, 2004

/e/ Margaret H. Culp

Thomas E. Johnson, ID #52000

Margaret H. Culp, ID #180609

Counsel for Chapter 13 Trustee

12 South Sixth Street, Suite 310

Minneapolis, MN 55402-1521

612-338-7591

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
THIRD DIVISION**

In re:

BKY 04-33308 GFK

*Charles M. Schrandt and
Beverly A. Schrandt,*
Debtors.

UNSWORN DECLARATION
FOR PROOF OF SERVICE

The undersigned, an employee of Jasmine Z. Keller, Standing Chapter 13 Trustee, declares that on July 20, 2004, she served the following:

1. Notice and Objection to Confirmation of Plan and for Motion for Dismissal;
2. Memorandum of Facts and Law
3. Proposed order; and
4. Unsworn Declaration for Proof of Service

on each of the entities named below as follows:

By electronic means only:

U.S. Trustee
612-664-5516

Lloyd S. Myster, Esq.
763-416-0065

By United States Mail, postage pre-paid:

Lloyd S. Myster, Esq.
701 Fourth Avenue South, Suite 500
Minneapolis, MN 55415

Charles A. Schrandt
Beverly A. Schrandt
1628 Fourth Street North
South St. Paul, MN 55075

And, I declare under penalty of perjury that the foregoing is true and correct.

Dated: July 20, 2004

/e/ Margaret H. Culp
Margaret H. Culp

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
THIRD DIVISION**

In re:

BKY 04-33308 GFK

*Charles M. Schrandt and
Beverly A. Schrandt,*

Chapter 13

Debtors.

ORDER

At St. Paul, Minnesota _____.

This matter came before the Court on the Chapter 13 Trustee's Objection to Confirmation of Plan and Motion to Dismiss. Appearances were noted on the record. Based on the files, the proceedings, and record herein,

IT IS ORDERED:

1. The Trustee's Objection to Confirmation is **SUSTAINED**.
2. Confirmation of the Debtors' Plan is **DENIED**.
3. The Chapter 13 case is **DISMISSED**.

Honorable Gregory F. Kishel
Chief United States Bankruptcy Judge